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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. HIPOLITO LULE PERALTA, Defendant and Appellant.	D074902 (Super. Ct. No. SWF1600346)

APPEAL from a judgment of the Superior Court of Riverside County, Elaine M. Kiefer, Judge. Affirmed.

Laura Schaefer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Beccera, Attorney General, Julie L. Garland, Assistant Attorney General, Meredith White and Tami Falkenstein Hennick, Deputy Attorneys General, for Plaintiff and Respondent.

Hipolito Peralta repeatedly raped and molested his teenage daughter over a four-year period in their family home. A jury convicted him of 15 counts of rape, lewd acts, oral copulation, sodomy, sexual penetration, and exhibiting harmful matter to a minor for seduction. Thirteen of those counts were aggravated, requiring the jury to find that Peralta accomplished the crime by force, violence, duress, menace, or fear of injury.

Peralta argues there was insufficient evidence of force or duress to support his aggravated convictions. As to his convictions for aggravated rape, he claims the court should have instructed jurors sua sponte that unlawful sexual intercourse with a minor was a lesser included offense. Both arguments rest on victim Jane Doe's testimony that Peralta never threatened her to engage in sexual acts and would leave her alone if she refused. As we explain, there is substantial evidence that Peralta coerced Jane's acquiescence by duress, and any instructional error was harmless given the jury's complete rejection of nonaggravated lesser offenses on other counts.

Finally, Peralta argues he received ineffective assistance of counsel when his attorney did not object to statements made during the prosecution's closing arguments that appeared to dilute its burden of proof. Because there was no error under *People v. Centeno* (2014) 60 Cal.4th 659 (*Centeno*) and no prejudice from any failure to object, we reject that claim. Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jane Doe lived with her father (Peralta), mother, and younger brother in a Murrieta apartment. When she and her brother were in elementary school, Peralta was the disciplinarian. He would "aggressively" hit them with a belt or his hands when the

siblings argued. Jane was protective of her brother, and Peralta was harder on him. She would ask to be hit instead, and Peralta would oblige. At an early age, Jane learned she could pretty much do as she wanted so long as she did what her father told her to do.

Jane was not afraid of Peralta when she was young, but she grew fearful as she got older. Peralta was an expert in Muay Thai mixed martial arts and competed in tournaments. Jane learned martial arts from her father and won trophies. But she described Peralta as more "aggressive" and feared he "could actually kill people with the moves that he knows."

When Jane was 12, she asked to use Peralta's cell phone. He handed her the phone with an open web page depicting adult pornographic images. Jane thought Peralta had left the page open by accident, but Peralta gave her his cell phone to her on subsequent occasions with open pornographic content.

Peralta started touching Jane at 13; she recalled at least three particular incidents at trial. He grabbed her hips and touched her buttocks during a hug. Another time, after sending Jane's brother and mother out of the house, he entered her room, undressed her, and touched her breasts. On a different occasion, a naked Peralta directed Jane to enter his room, touch his penis and perform a "hand job."

Peralta had vaginal intercourse with Jane about a month before her 14th birthday. He did so again repeatedly after Jane turned 14—Jane described incidents in his bedroom, in her bedroom, in the shower, and on his chair. Sometimes it happened every other week; other times it happened "constantly," up to four times in the same week. They also had oral sex. One time, Peralta put his mouth on Jane's vagina; another time,

he forced her to put her mouth on his penis. They had anal sex once, but Peralta stopped and apologized after Jane said it "really, really hurts."

When Jane turned 15, Peralta introduced sex toys. He inserted a dildo into her vagina, used a vibrator on her, and had vaginal intercourse while wearing a penis ring.

These encounters made Jane uncomfortable, but she never asked Peralta to stop. She felt really confused and thought his actions must be "normal"; her mother said that her father would never hurt her. Peralta sometimes had intercourse with Jane while her brother was asleep in the same room. Jane did not cry for help when this happened because she was afraid Peralta would hurt her brother.

Jane did not want her father to do any of these acts, but she agreed Peralta never threatened her physically or acted violently to coerce her. She also testified that there were no consequences to saying no; if she did, "that was the end of it." Jane did not report the abuse to her mother because she did not think she would believe her. She did not always trust her mother, who failed to protect her from her father's physical abuse as a child. Jane did not tell her brother or her friends, unsure of how they would react.

Jane's mother Beatriz knew that Peralta showered with Jane and often entered her bedroom naked. Confronting Peralta did not help; he would insist it was his "right" as Jane's father. He also threatened to have Beatriz deported and separate her from her children.

In January 2016, Beatriz called the City of Murrieta Police Department to report domestic issues with Peralta. By that point, their relationship was strained, and Peralta planned to leave her. Beatriz disclosed that Peralta had been taking showers with their

15-year-old daughter for the past four years. As Jane left for school, her mother told her a police officer might speak to her and that she should tell the truth. When an officer met with Jane at school, she confirmed the abuse.

Detective Andrew Spagnolo led the investigation, setting up a forensic interview and physical exam for Jane, taking pictures of the family home, and impounding the vibrator and penis ring as evidence. Jane's DNA was found on the nongrip area of the sex toys, with male DNA on the grip area. Adult pornographic videos were discovered on Peralta's cell phone.

A nurse practitioner conducted Jane's physical examination. Jane reported genital and rectal pain related to sexual intercourse and sex toys. The nurse found a deep notch, or a potential disruption, on a portion of her hymen tissue above her vaginal canal. This was suspicious and consistent with (but not conclusive of) the reported sexual abuse.

Peralta was charged in an amended information with 16 counts relating to his sexual conduct toward Jane between the ages of 12 and 15:

- five counts of aggravated rape—aggravated sexual assault of a minor under 14 by rape relating to the first vaginal intercourse (Pen. Code, §§ 269, subd. (a)(1), 261, subd. (a)(2) or (a)(6),[1] count 1), and four counts of aggravated rape of a minor over 14 relating to subsequent intercourse (§§ 261, subd. (a)(2), 264, subd. (c)(2), counts 5–8);
- three counts of aggravated lewd acts on a minor under 14 relating to Peralta touching Jane's breasts and buttocks and forcing her to touch his penis (§ 288, subd. (b)(1), counts 2–4);
- two counts of aggravated oral copulation of a minor over 14 (former § 288a, subd. (c)(2)(C), now § 287, subd. (c)(2)(C), counts 9 and 10);

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1 Further statutory references are to the Penal Code.

- one count of lewd acts on a minor aged 14 or 15 and over ten years younger than Peralta (§ 288, subd. (c)(1), count 11);
- two counts of aggravated sodomy of a minor over 14 (§ 286, subd. (c)(2)(C), counts 12 and 13);
- two counts of aggravated sexual penetration of a minor over 14 relating to the sex toys (§ 289, subd. (a)(1)(C), counts 14 and 15); and
- one count of distributing harmful matter to a minor intending to seduce her relating to showing Jane pornography on his cell phone (§ 288.2, subd. (a)(2), count 16)

At trial, the prosecution called Jane, Beatriz, the examining nurse, and law enforcement witnesses. Expert witness Jody Ward testified about the Child Sexual Abuse Accommodation Syndrome (CSAAS). CSAAS explains a pattern of behaviors commonly exhibited by child molestation victims. As Ward explained, child sexual abuse is often perpetrated in secret, with victims implicitly or explicitly told not to disclose it. Inherent power dynamics and dependency on adults leave victims feeling helpless to resist the abuse. Because many victims love their perpetrators as parental figures, they cope with the abuse to continue receiving positive aspects of their relationships or prevent siblings from being abused. Afraid of not being believed, many do not disclose abuse or do so only tentatively. Sometimes children recant or retract allegations after making a disclosure. Jurors received a limiting instruction that evidence regarding CSAAS could be considered only to understand Jane's behavior, not to prove molestation occurred.

Peralta did not present affirmative evidence in his defense. During closing arguments, his counsel urged the jury to disbelieve Jane and conclude no molestation

occurred. To the extent jurors found any sexual abuse, she argued it was not accomplished "by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another" as required for nearly all the charges. (§§ 261, subd. (a)(2), 286, subd. (c)(2)(C), 288, subd. (b)(1), former 288a, subd. (c)(2)(C), 289, subd. (a)(1)(C).)

The jury acquitted Peralta of a single sodomy incident (count 13) but otherwise convicted him as charged. The court sentenced Peralta to a term of 15 years to life on count 1 and a determinate term of 103 years, eight months on the remaining convictions.

DISCUSSION

Peralta challenges the sufficiency of the evidence of force or duress to support his 13 convictions for aggravated sexual conduct. He also claims the court prejudicially erred by failing to instruct jurors on unlawful sexual intercourse as a lesser included offense of aggravated rape. Finally, he contends the prosecution committed *Centeno* error during closing arguments, improperly diluting its burden of proof. (60 Cal.4th at p. 673.) Addressing these contentions in turn, we find either no error or no prejudice as to each.

1. *Sufficiency of the evidence*

Among other crimes, the jury convicted Peralta of aggravated sexual assault by rape of a minor less than 14 (count 1), aggravated lewd acts on a minor under 14 (counts 2–4), aggravated rape of a minor over 14 (counts 5–8), aggravated oral copulation of a minor over 14 (counts 9–10), aggravated sodomy of a minor over 14 (count 12), and aggravated sexual penetration of a minor (counts 14–15). Each of these convictions

required a finding that Peralta accomplished his crime "by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another." (§§ 261, subd. (a)(2), 286, subd. (c)(2)(C), 288, subd. (b)(1), former 288a, subd. (c)(2)(C), 289, subd. (a)(1)(C).) The language is in the disjunctive, meaning a conviction may be upheld if there is sufficient evidence of force, violence, duress, menace, *or* fear of bodily harm. (*People v. Young* (1987) 190 Cal.App.3d 248, 259.)

Peralta challenges his aggravated molestation convictions on the basis there was insufficient evidence of force or duress. To evaluate that claim, we review the whole record in the light most favorable to the judgment and determine whether it discloses any substantial evidence from which a reasonable trier of fact could find Peralta guilty beyond a reasonable doubt. (*People v. Cravens* (2012) 53 Cal.4th 500, 507.) We uphold the convictions unless there is no substantial evidence to support them under any hypothesis. (*Id.* at p. 508.) We do not substitute our judgment for that of the jury or reverse merely because the evidence might also support a different finding. (*People v. Jennings* (2010) 50 Cal.4th 616, 638−639.)

Peralta contends that because Jane admitted he did not threaten her or punish her if she said no, there is insufficient evidence he used force or duress to overcome her will. In building its case the prosecution focused mainly on duress. We do the same and conclude substantial evidence supports Peralta's convictions.

To find Peralta guilty based on duress, the jury had to find beyond a reasonable doubt "the use of a direct or implied threat of force, violence, danger, hardship, or retribution that causes a reasonable person to do something that he or she would not

otherwise do or submit to." (CALCRIM Nos. 1111, 1015, 1030, 1045; see CALCRIM No. 1000 [omitting hardship].) Jurors were told to consider "all the circumstances" in evaluating duress. (*Ibid.*; see § 261, subd. (b) [defining duress for aggravated rape]; *People v. Soto* (2011) 51 Cal.4th 229, 246 (*Soto*) [defining duress for aggravated lewd acts].)[2]

"The totality of the circumstances include the victim's age, her relationship to the perpetrator, threats to harm the victim, physically controlling the victim when the victim attempts to resist, warnings to the victim that revealing the molestation would result in jeopardizing the family, and the relative physical vulnerability of the child." (*People v. Thomas* (2017) 15 Cal.App.5th 1063, 1072 (*Thomas*).) A defendant's position of dominance and authority within the family and his continuous sexual exploitation are also relevant factors. (*People v. Schulz* (1992) 2 Cal.App.4th 999, 1005.) "When the victim is young and is molested by her father in the family home, duress will be present in all but the rarest cases." (*Thomas*, at pp. 1072–1073.)

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2 Relying on the Legislature's 1981 deletion of "against the will of the victim" from the aggravated lewd acts statute, a divided Supreme Court concluded that a minor's consent to a lewd act cannot negate duress. (*Soto*, *supra*, 51 Cal.4th at pp. 241–244.) Post-*Soto*, a victim's response to lewd acts is immaterial to whether the defendant *objectively* used duress to commit a lewd act. (*Id.* at p. 246.) In reaching this conclusion, the majority cautioned against drawing "a flawed analogy between lewd acts on a child and rape." (*Id.* at p. 243.) Whereas lewd acts crimes protect a child's *innocence*, rape protects a child's sexual *autonomy*. (*Ibid.*) Peralta raises the same sufficiency of the evidence argument as to each aggravated molestation conviction. Any differences between the duress element for these various crimes are therefore immaterial, and we address Peralta's arguments as to all aggravated counts together.

Contrary to Peralta's claim, this is not that rarest of cases. Jane feared her father, a martial arts competitor who aggressively disciplined her as a child. She learned from an early age to follow his instructions and comply with his wishes. Although the physical abuse decreased as she got older, the power dynamic remained. Jane loved, obeyed, and aimed to please Peralta. She was also fiercely protective of her younger brother, and Peralta was harder on him. Overhearing an argument between the siblings when Jane was 15, Peralta came into their room and hit Jane's brother. Jane got upset and refused to move, prompting Peralta to hit her too. Jane's mother was home but was unperturbed.

Peralta groomed Jane for abuse. He showed her pornography at 12, telling her not to show her brother. At 13, he sent Jane's mom and brother to the store, entered her bedroom, undressed her, and touched her breasts. Another time, he instructed Jane to come into his room while he was naked, touch his penis, and perform a hand job. At 14, Peralta sent Beatriz and his son out so he could rape Jane while she showered. Whenever Peralta told her that Beatriz had left and they would have a short amount of time, Jane understood this to mean that he was going to have sex with her. At times he raped Jane while her brother slept in the same room. Jane dared not call out, fearing Peralta would hurt her brother.

The molestation was always at Peralta's initiation and direction and against Jane's will. Peralta sent other family members away, showed Jane pornography, undressed and fondled her, directed her to touch his penis and perform a hand job, opened the shower door and fondled her, ordered her "to suck on his dick", positioned her during intercourse, lubricated her rectum, and introduced sex toys. (See *People v. Reyes* (1984)

153 Cal.App.3d 803, 811 [where minor testified that stepfather "told" nine-year-old victim to touch his genitals and masturbate him, jury could infer it was "an 'order,' not a request"].) Jane felt "weird," "uncomfortable," and "so confused" every time Peralta molested her, even though she never spoke up.

Jane did not trust her mother enough to tell her. Beatriz failed to protect Jane from physical abuse when she was young and assured her that Peralta "would never hurt her" if he loved her. Jane was also acutely aware of her parent's relationship problems when the abuse began, including Peralta's threats to have Beatriz deported and to separate her from her children. Jane worried that when her parents separated, her brother would be forced to live with Peralta. She also feared that if she told her teachers, she would be separated from her brother and mother.

The record paints a picture of a daughter in an unstable home deeply confused by the acts of a father she both loved but feared. She was unaware what sex even meant before her father raped her. When Peralta told her she "had to suck on his dick," she did not understand what he meant. Peralta instructed her, and she acquiesced. Peralta initiated intercourse up to four times a week. She did not question him, thinking he would never hurt her. The family disciplinarian, Peralta also made it clear that Beatriz was powerless. He scripted and initiated Jane's molestation at every turn, ensuring they were often alone at home. Viewed together, these circumstances easily support a reasonable inference that Peralta coerced Jane's acquiescence by duress—specifically, an implied threat of force, danger, or hardship. (See *Thomas*, *supra*, 15 Cal.App.5th at p. 1073 [father's weekly molestation of his daughter at home over a 10-year period was

by duress; although daughter did not expressly resist, his continual beatings terrified her, and jury could find implied threat of violence or danger if she did not submit to his sexual abuse]; *People v. Cochran* (2002) 103 Cal.App.4th 8, 15 (*Cochran*) [duress found where defendant's nine-year-old daughter was coached and at most acquiesced in the abuse]; *People v. Veale* (2008) 160 Cal.App.4th 40, 46−47 (*Veale*) [seven-year-old victim's fear of stepfather supported a finding of duress based on an implied threat].)

Peralta reads too much into Jane's testimony that he did not physically threaten her or force her to engage in sexual acts if she said no. "The fact that the victim testifies the defendant did not use force or threats does not preclude a finding of duress; the victim's testimony must be considered in light of her age and her relationship to the defendant." (*Cochran, supra,* 103 Cal.App.4th at p. 14.)

In *Cochran*, a defendant committed multiple sexual offenses against his nine-year-old daughter. She testified she was not afraid of him and that he stopped if she said anything hurt. (*Cochran, supra,* 103 Cal.App.4th at p. 15.) This did not preclude a finding of duress. Video evidence showed defendant directing and coaching an obviously reluctant child. (*Ibid.*) Although she denied being afraid, she testified the abuse made her mad or sad, that her father gave her money or gifts when they were alone, and that he told her not to tell anyone. (*Ibid.*) As a whole, the record revealed "a small, vulnerable and isolated child who engaged in sex acts only in response to her father's parental and physical authority." (*Ibid.*)

Likewise in *Veale, supra,* 160 Cal.App.4th 40, a defendant molested his seven-year-old stepdaughter several times, usually while they were alone in the house, without

making any verbal threats. (*Id.* at p. 43.) On two occasions the defendant relented when the victim responded angrily to his sexual requests. (*Ibid.*) At trial, she testified that she did not tell her mother because she was afraid and did not think her mother would believe her. (*Id.* at p. 44.) She feared the defendant would hurt her or her mother if she reported the abuse, although he never said he would. (*Ibid.*) Despite the lack of threats or physical force, the jury could reasonably find duress based on an implied threat from the victim's fear, combined with age and size disparities. (*Id.* at p. 47.)

Although Jane was a few years older than the victims in *Cochran* and *Veale* when the abuse started, similar power dynamics support a finding of duress based on an implied threat even if Peralta did not use physical force or verbal threats to secure acquiescence. Only in the rarest case will duress not be found where a young victim is molested by her father in the family home. (*Thomas*, *supra*, 15 Cal.App.5th at p. 1072; *Cochran*, *supra*, 103 Cal.App.4th at p. 16, fn. 6.) Simply put, this is not that rare case. Reviewing the record in the light most favorable to the judgment, there was substantial evidence to support a reasonable jury finding of duress as to Peralta's convictions on counts 1 to 10, 12, 14, and 15.

2. *Instructional error*

Next Peralta argues the court should have instructed the jury sua sponte that unlawful sexual intercourse with a minor (§ 261.5, subds. (a) & (c)) was a lesser included offense of aggravated sexual assault by rape (§ 269, subd. (a)(1), count 1) and aggravated rape (§ 261, subd. (a)(2), counts 5–8). He argues this error was prejudicial because "there was little, if any, evidence of force or duress."

The People agree that unlawful sexual intercourse with a minor is a necessarily included lesser offense of aggravated sexual assault by rape and aggravated rape under the statutory elements test. (See *People v. Parson* (2008) 44 Cal.4th 332, 349 [defining the elements test].) Nevertheless they claim no instruction was required because Peralta was either guilty of the greater crimes or not guilty of any crime. They also argue there was no prejudice. Because we agree there was no prejudice, we readily dispose of Peralta's instructional error claim.

Assuming the jury had been given the option, it is not reasonably probable it would have convicted Peralta of unlawful sexual intercourse with a minor instead of aggravated rape or aggravated sexual assault by rape. (See *People v. Breverman* (1998) 19 Cal.4th 142, 165.) The court instructed the jury on lesser included offenses not requiring force or duress as to the lewd acts, oral copulation, and sodomy counts. (§§ 288, subd. (a), former 288a, subd. (b)(1), 286, subd. (b)(1).) Defense counsel urged during closing arguments:

> "If you somehow believe that some of these acts were proven, then . . . it should only be on the lesser felony offenses that do not include the element of force, violence, menace, fear, or duress. According to [Jane's] own testimony, she could refuse these alleged sexual acts at any time, and that was the end of it."

Rejecting this invitation, the jury instead convicted Peralta of the greater offense (or acquitted in the case of the second sodomy). The prosecution focused mainly on duress as to the aggravated counts, and the duress evidence was identical as to each. It is not reasonably probable the jury would have convicted Peralta of the lesser offense as to

counts 1 and 5 through 8 but rejected the nonaggravated offense as to all other counts when given the opportunity.

3. *Ineffective assistance of counsel*

Finally, Peralta argues his convictions must be reversed because of prosecutorial error under *Centeno, supra,* 60 Cal.4th 659. He claims the prosecutor's statements during closing arguments implied that the jury could convict him if the evidence reasonably suggested his guilt. Because there was no objection by defense counsel, Peralta's contention is forfeited. (*Id.* at p. 674.) He therefore argues that his counsel's failure to object constituted ineffective assistance. (See *Strickland v. Washington* (1984) 466 U.S. 668, 686 (*Strickland*); *People v. Ledesma* (1987) 43 Cal.3d 171, 215 (*Ledesma*).) As we explain, no *Centeno* error occurred, but even if it did counsel's failure to object was not prejudicial.

Although "[a]dvocates are given significant leeway" during closing argument, it is misconduct to misstate the law or attempt to lessen the prosecution's burden of proof beyond a reasonable doubt. (*Centeno, supra*, 60 Cal.4th at p. 666.) A prosecutor may not imply during closing arguments that "the People's burden was met if its theory was 'reasonable' in light of the facts supporting it." (*Id.* at p. 671.) It is proper to direct jurors on "reasonably possible interpretations to be drawn from the evidence" but not to imply "that so long as [the prosecutor's] interpretation of the evidence was reasonable, the People had met their burden." (*Id.* at p. 672.)

A review of the reporter's transcript leads us to conclude no *Centeno* error occurred. During his closing statements, the prosecutor argued:

> "You're commonly hearing in the law 'is reasonable.' My burden, of course, is beyond a reasonable doubt. As we look the exhibits, as we look at the evidence, I ask you to always consider what is reasonable. Is it reasonable, based on the evidence, anything but this man repeatedly raped and molested his own daughter?
>
> "Is it reasonable, in light of the physical evidence, the transection to her hymen inside of her 15-year-old vagina, the DNA evidence on the sex toys, the fact that this young lady came in and described everything about a man that she, otherwise, loves.
>
> "Is it reasonable, any other interpretation of the evidence that you heard, anything but this man is guilty of each and every one of these crimes? And we'll return to that quite frequently."

Next, he discussed key evidence from the case. Noting that Jane had to undergo two physical examinations, he asked:

> "And returning back to the question of what is reasonable, is it reasonable to believe that any person, let alone a teenage child, would undergo such an experience to perpetuate a lie or some sort of manipulation of a father that she loved? And that young woman had to go through that, not just once, but twice for the purpose of seeking the truth."

Turning to DNA results from the sex toys, the prosecutor stated:

> "And when you use common sense and reason, there is only one reasonable conclusion, which is that the defendant is a child molester who sexually abused his own daughter, not just with his own body, but with sexual devices."

He then turned to the elements of the crimes, spending some time on the concept of force, duress, and fear. During this discussion, he asked:

> "So once again, I ask you to use common sense with regard to in a father/daughter relationship whether it is reasonable to believe that she would not be afraid of her father groping her, putting his penis in her mouth, putting his mouth on her vagina, and putting his penis inside of her vagina and her anus. Is it reasonable for him to think that she was consenting to these acts, that she wanted to have sex

> with her father, that she wanted to play with sex toys with her father? Is that reasonable that a 13-year-old or a 14-year-old would be consenting to these actions, that she would not be afraid of what he was doing? More importantly, that he doesn't know that she's afraid, and that he's her father?"

Concluding his remarks, the prosecutor reiterated his burden of proof:

> "And I just ask you to return again to what is the standard and what is the burden in this case. And that's beyond a reasonable doubt. Not beyond all doubt because everything in life is subject to some possible or imaginary doubt, as [CALCRIM No.] 220 describes."

He commented that based on the evidence, the "only evidence in this case" is that Peralta abused his position of trust and was guilty of every count.

The jury then heard from defense counsel, whose closing remarks focused heavily on the prosecution's burden of proof beyond a reasonable doubt. She urged jurors to find that the burden had not been met because Beatriz may have fabricated the allegations. During his rebuttal argument, the prosecutor picked up where defense counsel left off. He asked jurors to "take a moment and think about what she's really alleging" before "returning again to our burden, which is beyond a reasonable doubt." "Is it reasonable, these propositions that she's proposed?" "So first of all, you have to believe that [Beatriz] concocted this plan. And is that reasonable?"

As we read it, the prosecutor told jurors to draw reasonable inferences from the circumstantial evidence. That was proper. (*People v. Romero* (2008) 44 Cal.4th 386, 416 [no error in telling jurors to " 'accept the reasonable and reject the unreasonable' "]; CALCRIM No. 224 ["when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable"].) Contrary to Peralta's

claim, the prosecutor did not urge jurors to reach *a* reasonable result based on the evidence. Such argument would be improper because "even if the jury rejects the defense evidence as unreasonable or unbelievable, that conclusion does not relieve or mitigate the prosecutorial burden." (*Centeno*, *supra*, 60 Cal.4th at p. 673.) Instead, the prosecutor urged the jury to draw *the only* reasonable conclusion from the evidence. In effect, he argued that the jury should have no reasonable doubt because there was only one reasonable conclusion—that Peralta was guilty. He repeatedly emphasized that his burden of proof was beyond a reasonable doubt. Because there was no error warranting a defense objection, counsel's performance was not deficient. (*Id.* at p. 674; *Strickland*, *supra*, 466 U.S. at p. 688.)

Moreover, this was not the "very close case" presented in *Centeno*. (*Centeno*, *supra*, 60 Cal.4th at p. 677.) There was no physical evidence corroborating the alleged lewd acts in *Centeno*; the minor denied the event occurred at trial; and the minor's father corroborated the defendant's account at trial that nothing had occurred. (*Id.* at p. 670.) On that record, defense counsel's failure to object to the prosecutor's argument amounted to constitutionally ineffective assistance. By contrast, Jane consistently implicated her father, and her mother knew at the very least about their showering together. Physical signs on her hymen and DNA evidence on the sex toys corroborated Jane's account. Even if *Centeno* error occurred, there is no reasonable probability defense counsel's

failure to object impacted the verdict. (*Id.* at p. 676; *Strickland*, *supra*, 466 U.S. at p. 686; *Ledesma*, *supra*, 43 Cal.3d at pp. 217−218.)[3]

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.

[3] Peralta argues "the claims made by Jane were not without doubt, and her credibility was seriously challenged." He contends his counsel's failure to object was prejudicial because "the circumstances surrounding the reporting of the alleged molest are sufficient to raise a reasonable doubt." Contrary to Peralta's claim, the evidence of guilt was overwhelming, unlike in *Centeno*. Moreover, to assess prejudice, we consider only whether there is *a reasonable probability* that, but for counsel's unprofessional errors, Peralta would have faced a different outcome. (*Centeno*, *supra*, 60 Cal.4th at p. 676.)